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Attorneys for Defendant Facebook, Inc.,

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION,

This document relates to:

ALL ACTIONS

CASE NO. 3:18-MD-02843-VC

**DECLARATION OF COLIN B. DAVIS IN
SUPPORT OF FACEBOOK, INC.'S
ADMINISTRATIVE MOTION TO
ADDRESS NEW REQUESTS FOR
PRODUCTION OF FINANCIAL
DOCUMENTS**

1 I, Colin B. Davis, declare:

2 1. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for
3 Defendant Facebook, Inc. I am a member in good standing of the Bar of the State of California and a
4 member in good standing of the Bar of this Court. I submit this declaration in support of Facebook's
5 Administrative Motion to Address New Requests for Production of Financial Documents. I have
6 personal knowledge of the facts set forth in this declaration, except where noted otherwise, and, if
7 called to do so, could and would testify competently thereto.

8 2. On June 9, 2022, during a case management conference, this Court ordered Facebook
9 to complete production of "financial documents" Plaintiffs previously requested by July 1, 2022, in
10 advance of a continued Rule 30(b)(6) deposition on the following topic:

11 Facebook's calculation of revenues, gross profits and net profits recognized by
12 Facebook relating to Users' Data or Information, including but not limited to how
13 Facebook monetized User Data or Information, how Facebook quantified the value of
14 sharing User Data or Information, and Facebook's business and marketing strategy
15 regarding the monetization and quantification of User Data or Information.

16 3. On June 15, 2022, the parties met and conferred concerning Plaintiffs' requests for
17 production of financial documents. During the meet and confer, and in a letter the next day, Plaintiffs
18 requested that Facebook produce financial documents "showing the revenue Facebook received from
19 all third parties whose access to data was limited as part of the ADI process," and "[d]ocuments
20 reflecting revenues associated with third parties who were whitelisted."

21 4. Plaintiffs took the position that these requests were not new because Plaintiffs
22 previously requested documents regarding the overall financial impact of ADI and whitelisting *on the*
23 *Company*. Facebook explained that it had not identified documents showing the former—although it
24 has produced detailed reports showing the Company's overall financial position over time—but that it
25 would agree to generate documents responsive to the latter, which were new requests. Facebook also
26 explained that it would try to generate these materials by the July 1, 2022 deadline for Plaintiffs'
27 previous requests, but that it anticipated it would be "extraordinarily difficult" to do so.

28 5. On June 29, 2022, Facebook determined that, despite diligent efforts, it could not
generate new documents responsive to Plaintiffs' new requests by July 1, 2022, and asked Plaintiffs to

1 submit a joint request to the Court seeking a new deadline applicable to the new requests. Plaintiffs
2 refused.

3 6. Facebook has diligently sought to collect and produce financial information and
4 documents requested by Plaintiffs. When Plaintiffs sought the production of seven categories of
5 financial documents in February 2022, Facebook conducted an extensive search and produced by
6 May 6 more than 2,000 additional financial documents responsive to Plaintiffs' requests.

7 7. After taking a monetization-focused Rule 30(b)(6) deposition on May 19, Plaintiffs
8 requested the production of additional financial documents. Facebook responded by agreeing to search
9 for and produce various specific categories of information and requesting to meet and confer with
10 Plaintiffs about others.

11 8. On June 15, 2022, the parties met and conferred concerning Plaintiffs' requests.

12 9. In a June 16, 2022 letter, Plaintiffs revised certain requests, stating that, regarding the
13 ADI, they sought "1) Documents showing the revenue Facebook received from all third parties whose
14 access to data was limited as part of the ADI process, and 2) Documents showing a comprehensive
15 revenue analysis of changes to third parties' access to information as a result of ADI." The same letter
16 also purported to "reiterate[] [Plaintiffs'] longstanding request for ... [d]ocuments reflecting revenues
17 associated with third parties who were whitelisted."

18 10. On June 23, 2022, Facebook responded to Plaintiffs' June 16 letter. Facebook made
19 clear in its response that it disagreed that the information Plaintiffs sought regarding whitelisted
20 applications had been requested previously. And, more broadly, Facebook explained that it was
21 "unaware of any preexisting materials responsive" to Plaintiffs' new ADI- or whitelisting-related
22 revenue requests. Id. Nonetheless, "in the spirit of compromise and to avoid unnecessary dispute,"
23 Facebook volunteered "to generate materials to respond to Plaintiffs' specific requests" regarding the
24 purported revenue impacts by entity of the ADI and whitelisting, while noting that "generating those
25 materials [would be] a time-consuming process that will be extraordinarily difficult to complete by
26 July 1." Specifically, Facebook agreed to "undertak[e] the time-consuming process of generating
27 materials sufficient to show revenues attributable to app developers whose access was limited or
28 removed as a result of the ADI process, if any, for the period from 2017-2020," and to "generat[e]

1 materials sufficient to show revenues attributable to app developers identified in Facebook’s response
2 to Plaintiffs’ Interrogatory No. 27 [regarding whitelisting], if any, during the putative class period.”

3 11. Facebook has made diligent efforts to collect and produce the financial documents and
4 information Plaintiffs requested following the May 19 Rule 30(b)(6) deposition. In addition to meeting
5 and conferring with Plaintiffs’ counsel and exchanging correspondence, a team of lawyers from
6 Gibson, Dunn & Crutcher and in-house Facebook lawyers have conducted at least sixteen interviews
7 of twenty-five additional Facebook employees to locate and/or generate, as applicable, the documents
8 and information that Plaintiffs seek. As a result of these efforts, which are ongoing, Facebook expects
9 to produce a significant quantity of additional financial documents and information sought by Plaintiffs
10 by the July 1 deadline set by this Court.

11 12. With respect to Facebook’s voluntary agreement to generate documents responsive to
12 Plaintiffs’ new requests, seeking documents relating to the financial impacts of ADI and whitelisting
13 by entity, however, Facebook requires additional time. As Facebook explained to Plaintiffs, no
14 responsive documents exist, but Facebook is working to generate documents responsive to Plaintiffs’
15 requests. But generating these materials—which attempt to capture the advertising revenue attributable
16 to app developers or individual apps—is a complicated, multi-step process requiring the dedication of
17 significant resources.

18 13. First, Facebook must identify the developer of each app impacted by the ADI process
19 or that received whitelisted access to certain features.

20 14. Second, Facebook must manually run queries using search terms (*e.g.*, searching for
21 “Amazon”) to identify the relevant corporate entity(ies) associated with each app developer identified
22 in the first step that provided advertising revenue to Facebook.

23 15. Third, Facebook must review each entity identified by this query to determine if it
24 actually is affiliated with the relevant app developer (*e.g.*, “Amazon.com, Inc.”) or whether it is instead
25 an unrelated entity with a similar name (*e.g.*, “John Smith’s Personal Amazon Store” or “Save the
26 Amazon Coalition”).

27 16. Fourth, once the list of relevant entities is generated, Facebook must query its revenue
28 records to determine the revenue, if any, attributable to each entity over the relevant time period. Given

1 the lengthy time period at issue and the amount of revenue data Facebook maintains, this last step
2 requires running queries across vast amounts of data.

3 17. To date, Facebook has been unable to successfully complete this last step; the queries
4 either have resulted in errors or have timed out without returning useful results. Facebook is in the
5 process of attempting to develop a technical solution to allow the necessary queries to run successfully,
6 and it is optimistic that it will succeed in achieving a method for doing so, but it cannot guarantee
7 immediate success.

8 18. On June 29, 2022, Facebook met and conferred with Plaintiffs to inform them of these
9 issues, but Plaintiffs would not agree to stipulate to a new date for production of these documents.

10 19. During the June 29, 2022 meet-and-confer, I informed Plaintiffs' counsel of Facebook's
11 intention to file this administrative motion absent a stipulation between the parties. Specifically, I
12 inquired whether Plaintiffs' counsel would stipulate to a new deadline for production of the recently
13 requested financial documents. Later on June 29, 2022, Plaintiffs' counsel responded by email
14 indicating that Plaintiffs would not agree to stipulate to a new deadline.

15 20. Plaintiffs have previously indicated their willingness to take additional Rule 30(b)(6)
16 testimony regarding monetization after the July 1 deadline for production of financial documents, and
17 the parties have been discussing a date for that continued deposition in early August (after Plaintiffs
18 declined to accept dates offered by Facebook in late July).

19 21. The requested order to address new requests for production of financial documents will
20 not, by itself, alter the schedule of this action.

21 I declare under the penalty of perjury under penalty of perjury under the laws of the United
22 States of America that the foregoing is true and correct.

23 Executed this 30th day of June, 2022 at Wilmington, Delaware.

24
25 /s/ Colin B. Davis
Colin B. Davis